IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1035

JULIA ROGERS, *Petitioner,*

v.

LEROY LOETHER, ET AL., *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, WASHINGTON, D. C.

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INTEREST OF THE AMICUS

This Brief is filed with the written consent of the parties hereto, pursuant to Rule 42(2), Supreme Court Rules.

NCDH was founded in 1950 to establish and implement a program to eliminate racial segregation and discrimination in housing. Since then, NCDH has lodged numerous challenges to discriminatory housing practices and exclusionary land use controls, and has been actively engaged in educational projects designed to

insure nondiscriminatory access of minorities and the poor to equal opportunity in housing. In its continuing effort to eradicate racial discrimination and to achieve housing dispersal on a non-segregated basis, this Brief is submitted in the belief that Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619 (hereinafter the "Fair Housing Act"), can be properly administered and enforced only by preserving to private citizens, seeking to vindicate their right to freedom from discrimination in the purchase and lease of real property, the most expeditious and inexpensive legal redress. To encumber unduly the assertion of these federally protected rights by the complicated and expensive procedures inherent in a jury trial would only serve to dilute the effectiveness of the Statute, discourage aggrieved citizens from seeking enforcement, and frustrate the intent of Congress.

OPINIONS BELOW

1. Opinion of the District Court denying demand for jury trial was entered on May 19, 1970; reported at 312 F.Supp. 1008.

2. District Court's unreported findings of fact and conclusions of law, entered October 27, 1970.[1]

3. Opinion of the Court of Appeals entered on September 29, 1972; reported at 467 F.2d 1110.

JURISDICTION

Judgment of the Court of Appeals was entered September 29, 1972. Petition for writ of certiorari was filed January 26, 1973, and granted June 11, 1973. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

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[1] Appendix to Petition for Writ of Certiorari, pp. 7a-12a.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution, Amendment VII.

2. United States Constitution, Amendment XIII.

3. The Civil Rights Act of 1968, §§ 801-819 (Title 42 U.S.C. §§ 3601-3619).

QUESTIONS PRESENTED

1. Whether an action for injunctive relief and damages, either actual or punitive, brought under a statutorily created cause of action under the Fair Housing Act by a private citizen to enforce her right to freedom from discrimination on the basis of race in the rental of real property is an action in which Defendant is entitled to a trial by jury?

2. Whether the District Court erred in denying the defendants' demand for jury trial, in an action brought pursuant to a statutorily created cause of action under the Fair Housing Act for punitive damages and injunctive relief against discrimination on the basis of race in the rental of an apartment, where the only issues remaining for determination were those of punitive and compensatory damages—the injunction having been dissolved prior thereto by the consent of the Plaintiff?

STATEMENT OF THE CASE AND PROCEEDINGS BELOW

This case was filed in the United States District Court for the Eastern District of Wisconsin seeking relief under the Civil Rights Act of 1968, Title VIII, (42 U.S.C. §§ 3601-3619), which prohibits discrimination in the sale or rental of housing on the basis of race, color, religion or national origin. The District Court's jurisdiction was based on 42 U.S.C. § 3612(a).

On October 30, 1969, Jacqueline Haessly responded on behalf of her friend, Petitioner Julia Rogers, who was hospitalized, to an advertisement in the Milwaukee Journal for the rental of an apartment. After a brief interview with Mrs. Perez, the cousin of the landlords, Leroy and Mariane Loether, their apparent agent, and following a phone conversation between Mrs. Perez and Mrs. Loether, Mrs. Perez was authorized to accept a deposit on the apartment from Miss Haessly on Mrs. Rogers' behalf. During that conversation, Mrs. Loether also elicited information regarding the applicant's financial status, marital status, and family size. Upon Mrs. Loether's request, Miss Haessly gave her the number of the hospital room in which Mrs. Rogers was confined to allow her to discuss the rental directly with the Petitioner.[2]

Mrs. Loether called Mrs. Rogers at the hospital and discussed the rental of the apartment, at which time Mrs. Rogers informed Mrs. Loether that she was black. Upon the disclosure of Petitioner's race, Defendants revoked the apartment rental.[3]

Petitioner filed her complaint in the District Court on November 11, 1969, for injunctive relief and punitive damages against Leroy and Mariane Loether and Mrs. Anthony Perez for refusal to rent her an apartment because of her race in violation of the Fair Housing Act.

The District Court granted Petitioner's motion for temporary restraining order on November 17, 1969, and after an evidentiary hearing on November

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[2] District Court's oral Findings of Fact and Conclusions of Law. Appendix to Petition for Writ of Certiorari, pp. 8a-9a.

[3] *Id.* at pp. 9a-10a.

20, 1969, entered a preliminary injunction restraining the rental of the apartment pending final determination by the Court.[4]

Defendants answered and demanded a trial by jury.

Petitioner, after the issuance of the preliminary injunction and before the Court's ruling on the Defendants' jury demand, found a place to live. The Court thereupon on April 30, 1970 dissolved the preliminary injunction with the consent of the Petitioner.[5]

Petitioner, at pre-trial hearing, indicated an interest in compensatory damages, and the Court viewing her claim as inclusive of both compensatory and punitive damages entered a pre-trial order requiring her to submit an itemized statement of her special damages. (Petition for Writ of Certiorari, p. 7).

The Court, subsequent thereto, denied the Defendants' demand for jury trial, leaving pending before it for trial only the issues of punitive and compensatory damages, and attorney's fees.

The District Court in its opinion and order of May 19, 1970 denying demand for jury trial found that

> "this cause of action is a statutory one invoking the equity powers of the court, by which the court may award compensatory and punitive money damages as an integral part of the final decree so that complete relief may be had. The action is not one in the nature of a suit at common law, and

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[4] *Id.* at p. 7a.

[5] *Ibid.*

therefore there is no right to trial by jury on the issue of money damages in the case." *Rogers* v. *Loether,* 312 F.Supp. 1008, 1009.

The Court further held that

> "An action under Title VIII is not an action at common law. The statute does not expressly provide for trial by jury of any issues in the action." (312 F. Supp. at 1010)

At trial the Court found that Plaintiff had suffered no actual damages[6] but assessed punitive damages of $250.00. The request for attorney's fees was denied.

Defendants appealed the decision of the District Court to the Seventh Circuit Court of Appeals alleging error in the Court's finding of discrimination, the award of punitive damages, and denial of jury demand.

The Court of Appeals found no error in the award of punitive damages and finding of discrimination, *Rogers* v. *Loether,* 467 F.2d 1110, 1112, but reversed and remanded on the issue of denial of jury trial.

The Court of Appeals held:

> "(1) the constitutional right to trial by jury applies in at least some judicial proceedings to enforce rights created by statute; (2) this action for damages is "in the nature of a suit at common law"; . . . (3) the nature of the claim is "legal" . . . (4) the right to a jury trial may not be denied on the ground that the damage claim is incidental to a claim for equitable relief . . ." 467 F.2d at 1112-1113.

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[6] Petitioner having failed to file, as ordered by the Court at pre-trial hearings, a statement of special damages, the court sustained defendants' objection to testimony concerning actual damages. (Trial transcript, October 26, 1970, p. 5).

SUMMARY OF THE ARGUMENT

The Seventh Amendment to the United States Constitution provides that in "(s)uits at common law, where the value in controversy exceeds twenty dollars, the right to trial by jury shall be preserved."

It is the position of the Amicus that the constitutional guarantee to jury trial is not applicable to, and in the interest of justice should not be extended to, an action brought under Section 812 of the Fair Housing Act by a private person, seeking to vindicate the rights declared by that statute.

The nature of the action created under Section 812 of the Act is an equitable one for which there is no adequate remedy at law and for which no analogous counterpart existed at common law at the time of the adoption of the Seventh Amendment.

The action, as created by statute, is not one for money damages *per se* based on a traditional legal claim. There is, in fact, no amount in controversy—nor is there a claim akin to any action triable by jury for which money damages may be had. The primary thrust of the statute is remedial—the enforcement of the general public interest in insuring continuing compliance with the national policy declared by Congress "to provide, within constitutional limits, for fair housing throughout the United States."

The Act provides two conditions under which an aggrieved party may bring a civil action:

(1) Under Section 810, the Secretary of Housing and Urban Development is charged with the duty of enforcement through an administrative procedure whereby the aggrieved party files a complaint and the

Secretary takes appropriate measures to effectuate compliance. If the Secretary is unable to obtain voluntary compliance, the aggrieved person may commence a civil action in the appropriate U. S. District Court under the conditions set forth in Section 810(d).

(2) Similarly, a civil action under Section 812 may be brought by the aggrieved private person for enforcement of rights guaranteed under the Act:

> "The Court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1000 punitive damages . . ."

A civil action brought under either Section 810 or 812 is subject to continuance by the Court from time to time before bringing it to trial "if the Court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in a satisfactory settlement of the discriminatory housing practice complained of in the complaint."

The language of the Act (Section 812(a)) is framed in discretionary terms respecting the duty of the Court to first conciliate the matter before proceeding to trial.

Thus, though the statute creates a new cause of action, Congress has specifically embodied its intent that the statutory procedure, as set forth under the Act, is akin more to a proceeding of judicial mediation or conciliation than it is to the traditional form of civil action requiring issues to be adjudicated by a jury. To require a trial by jury under these proceedings, where such a safeguard clearly is not required, would only serve to complicate the proceedings, causing unusual delay and extreme hardship to the parties. Fur-

thermore, it would discourage, as inexpedient, the primary means of enforcement of the Act. *Trafficante* v. *Metropolitan Life Insurance Company,* 409 U.S. 205, 209.

The award of damages, as contemplated by the Act, is not based on a legal claim cognizable at common law, but instead is framed in language which authorizes the judge, sitting without a jury, to grant whatever relief he deems just and appropriate that will afford complete relief and insure continuing compliance under the circumstances of each case. Moreover, to deny the aggrieved person, seeking enforcement of rights granted under the Act, the expeditious relief required by Section 814 of the Act would thwart the intent of Congress by rendering ineffective the contemplated remedy. Section 814 of the Act provides:

> "any court in which a proceeding is instituted under Section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited." (42 U.S.C. § 3614)

The majority of the aggrieved persons who seek redress under the provisions of the Act are minority and poor. The lengthy and cumbersome requirement of a jury trial proceeding in the determination of their claims would work an undue hardship on these classes, imposing a heavy burden for which there can be advanced no legitimate purpose. Minority groups who are discriminated against in access to housing have neither the resources nor the luxury of time inherent in a lengthy jury trial proceeding. Their housing need is imminent and urgent, necessitating an expeditious resolution of their claim if the remedy afforded them by statute is to have any real significance. To require

that a claimant wait until his or her claim is determined by a jury, would in most instances result in a discontinuance of the action, or a dilution of its effectiveness due to the immediate need to seek alternate housing accommodations. Discrimination on the basis of race, as in this case, has too long been a scourge to this nation's principles of democracy and freedom. A requirement of any less than the full and effective implementation of Federal statutes designed to obliterate the historical vestiges of slavery from the lives of more than 20 million Americans is to deny equal protection of laws and to impose upon a racial class a burden too long carried. See *Jones* v. *Mayer Co.*, 392 U.S. 409, at 444-445, 88 S.Ct. 2186, at 2205-2206 (concurring opinion of Mr. Justice Douglas). The mandate of Congress is clear. The Fair Housing Act must be administered and enforced, in accordance with the language of the statute, in an expeditious and efficient manner if the declaration of the national policy of fair housing throughout the nation is to be realized.

ARGUMENT

I. The District Court Did Not Err in Denying Defendants' Demand for Jury Trial in an Action for Injunctive Relief and Damages Under Section 812 of the Fair Housing Act.

The Seventh Amendment right to jury trial is not applicable to, nor should it be extended to, claims arising under the Fair Housing Act, Section 812. The right created under that provision of the Act is a new equitable cause of action.

The award of damages is expressly committed to the discretion of the court—with an overriding condition, consistent with the perceived intent of Congress—that the court take every measure judicially expedient

to insure conciliation of claims without trial, if possible. The Seventh Amendment only preserves a right to jury trial in suits existing at common law at the time the Amendment was adopted. The crux of the issue in this case is whether the claim created under the Fair Housing Act is analogous to a suit at common law to which the defendant is entitled to a trial by jury.

Historically, if a new cause of action was created by statute and the statute was silent on the mode of trial, the court looked to the nearest analogy to decide if there was a right to jury trial. The Court of Appeals, considering the nature of the substantive right asserted here,[7] concluded that it was analogous to a common law action of a traveler against the innkeeper who refused without justification to rent lodging (467 F.2d at 1117). However, historically the innkeeper's duty to provide lodging to a traveler was not founded on a traveler's right to be free from discrimination, but rather was based upon contract. It was a well established legal principle in common law jurisdictions that the business of an innkeeper was quasi-public in character. The underlying theory governing the relation of the innkeeper and guest was that "The innkeeper holds himself out as able and willing to entertain guests for hire; and in the absence of a specific contract, the law implies that he will furnish such entertainment as the character of his inn and reasonable attention to the convenience and comfort of his guests

[7] See 467 F.2d at 1113-1114, where the court discusses the Seventh Amendment's inapplicability to claims that did not arise under common law, and analyzed the claim asserted herein under the criteria set forth by Mr. Justice Story in *Parsons* v. *Bedford*, 28 U.S. (3 Pet.) 433, 7 L.Ed. 732.

will afford." *DeWolf* v. *Ford,* 193 N.Y. 397, 86 N.E. 527, 530. The action was one to recover damages resulting from the innkeeper's breach of the duty owed to his guest. Damages were recoverable in such cases not merely because defendant was bound to give plaintiff accommodations, but also because of the indignity suffered by *public expulsion, Aaron* v. *Ward,* 203 N.Y. 351, 357, 96 N.E. 736, 738; *Odom* v. *East Avenue Corporation,* 34 N.Y.S.2d 312.

As thus illuminated, it is apparent that expansion of this common law cause of action to the right of racial minorities to be free from discrimination in housing, or to encompass a modern landlord's duty to refrain from refusal to rent real property on the basis of race, color, religion or national origin, strains the imagination.

The practices of slavery and bondage were widely sanctioned throughout the colonies and the old world.[8] Thus, it is unreasonable to conclude that there were any actions at common law for the protection of rights against discrimination, racial or otherwise, as contemplated by the Fair Housing Act. The nature of the substantive right granted under the Act is not based on contract, but instead is founded upon the democratic principle that every citizen in the United States has an inherent right to purchase or lease real property without regard to previous condition of servitude, national origin or creed.

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[8] Note Petition for Writ of Certiorari, pp. 16-17, citing *Somerset* v. *Stewart,* 98 Eng. Rep. 499 (K.B. 1772); *King* v. *Inhabitants of Thomas Ditton,* 99 Eng. Rep. 891 (1785); and A. Lester & G. Bindman, *Race and Law* 32 (1972).

Further, unlike the action at common law available to a traveler against an innkeeper, the rights declared under the Fair Housing Act are not enforced through an action at law for damages. Instead the action is expressly for injunctive relief—historically a matter of equity jurisdiction and unknown at common law. It is not unintentional that the drafters of the Fair Housing legislation did not more specifically provide for a civil action for money damages alone. Congress realized that civil rights cannot adequately be protected in a damage action. The very nature of the right is such that money damages cannot compensate for the loss suffered. But courts of equity have remedies available which are capable of giving complete relief—equity relief being free from local prejudice often found in juries. It is uncontroverted that there is no right to a trial by jury in an action for injunctive relief. A court in equity has exclusive jurisdiction to fashion relief tailored to protect the right involved in each individual situation and to create a deterrent to the potential wrongdoer before the violation is commited.[9]

That Congress intended the remedy created under the Fair Housing Act to be one of exclusive equitable jurisdiction can be inferred from the language of the Act's enforcement provisions:

> "Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur . . . may file a complaint with the Secretary." (42 U.S.C.A. § 3610(a))

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[9] "Equity's Role in Protection of Civil Rights", 37 Iowa L. Rev. 268 (1952).

Clearly, the relief afforded is not only addressed to wrongful acts already committed, but also to anticipatory acts for which no action at common law was available. Further, Section 3610(d), Title 42 U.S.C. provides:

> "If within thirty days after a complaint is filed with the Secretary or . . . the Secretary has been unable to obtain voluntary compliance . . . the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent . . . to enforce the rights granted or protected by this subchapter . . . If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to provisions of § 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate."

Section 3612(a), Title 42, U.S.C., provides:

> "The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy . . . the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court."

The court in enunciating the proposition that Section 3610 and Section 3612 constitute alternative remedies in the enforcement of the Fair Housing Act, in

Johnson v. *Deckler*, 333 F.Supp. 88, 89 (N.D. Cal. 1971) commented that "Section 3612 would appear to allow enforcement of rights guaranteed by the Fair Housing Act by suit filed in any district court which meets that section's venue requirement . . . No prerequisite of seeking administrative relief from HUD is imposed. It is expressly provided, however, that the suit may be continued, if the administrative efforts the Court's opinion, are likely to result in satisfactory settlement of the problem." See also *Brown* v. *LoDuca*, 307 F.Supp. 102, 1969.

Finally, Section 812(c) provides:

> "The court *may* grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order, and *may* award to the plaintiff actual damages and not more than $1,000 punitive damages . . ." (emphasis added) 42 U.S.C. 3612(c).

Clearly, from a reading of the statute as a whole, equity powers of a court to grant injunctive relief to correct a violation which has either occurred or is about to occur, and to order "as the court deems appropriate" complete relief are expressly granted to the court.

There is no action at common law analogous to the relief Congress contemplated granting to an aggrieved party under this Act. A claim arising thereunder does not present issues entitling respondent to a trial by jury.

The Court of Appeals' finding that the nature of the substantive right asserted was analogous to a common law cause of action existing at the time of the adoption of the Seventh Amendment was simply

wrong. Its rationalization that *Dairy Queen* v. *Wood,* 369 U.S. 469, 82 S.Ct. 894, required the damage issue to be tried to a jury was also wrong. *Dairy Queen* does indeed stand for the proposition that a claim otherwise triable by jury must be so tried, even if it may be deemed incidental to the claim for injunction; a litigant may not be denied Seventh Amendment rights in a claim where legal issues are presented in combination with equitable issues. However, this is not a *Dairy Queen* situation. Under the language of the statute, there is no legal claim, only an equitable one. The award of punitive and compensatory damages is discretionary, affording to the court exclusive equitable jurisdiction to decree complete relief. The damage provisions of the Fair Housing Act do not authorize a claim for a purely money judgment. Compensation to a claimant under the Act is woven into the fabric of a remedial measure for correction of violations of the nation's public policy against discrimination.

The Court further supported its conclusions by relying on *Beacon Theaters Inc.* v. *Westover,* 359 U.S. 500, 79 S.Ct. 948. *Beacon Theaters* rests on the proposition that the parties were not excluded from asserting their claims through an adequate remedy at law. In the traditional sense, there is no adequate remedy at law here and thus *Beacon* too is distinguishable from the instant case.

Finally, *Ross* v. *Bernhard,* 396 U.S. 531, 90 S.Ct. 733 (1970) is considered by the Court of Appeals as controlling in this case. However, *Ross* v. *Bernhard* was an action brought as a derivative suit. This Court held that "the right to jury trial attaches to those issues in derivative actions as to which the corpora-

tion, if it had been suing in its own right would have been entitled to jury". A derivative stockholder's suit is in the nature of an equitable remedy, allowing the stockholders to enforce a corporate cause of action against the officers, directors, and third parties and to call upon said parties for an accounting. Where the corporation could have properly brought a bill of equity, the action is clearly equitable and no right to jury trial attaches. It is only when the cause of action asserted, no matter what the form of the complaint, could have been brought by the corporation in an action at law that the holding of *Ross* v. *Bernhard* is applicable for then, legal issues common to issues of an equitable nature, are triable by jury. 396 U.S. 534-536.

Once again, the ultimate question is whether the plaintiff in an action brought under the Fair Housing Act has an adequate remedy at law. Can the claim asserted in equity also be brought in an action at law? Clearly, the answer is no. The claim under the statute is a purely equitable one to which the Seventh Amendment right to trial by jury does not attach.

A long line of cases in the Federal courts support the proposition that "a statute will not be read as having created a right to trial by jury, on a claim for injunction unless Congress has expressly so provided." *Wirtz* v. *District Council No. 21 Brotherhood of Painters, Decorators and Paperhangers of America*, 211 F.Supp. 253 (E.D. Pa. 1962). In *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S.Ct. 615, 629 (1937), this Court indicated that if Congress creates a statutory proceeding that is not in the nature of a suit at common law, the right to trial by jury is not preserved.

The District Court in its order and opinion denying the respondent's demand for jury trial relied heavily on cases dealing with the award of back pay in discrimination cases brought under Title VII of the Civil Rights Act of 1964. It is the position of the *Amicus* that these cases are more analogous to the case before this Court.

In *Johnson* v. *Georgia Highway Express, Inc.*, 417 F.2d 1122, 1125 (5th Cir. 1969) and the cases cited therein, the court held with reference to the right to trial by jury in an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*, that:

> "... the element of back pay is ... expressly provided for under the Act itself ... Under this section, if the court finds illegal employment practices, one available remedy is reinstatement with or without back pay. The demand for back pay is not in the nature of a claim for damages, but rather is an integral part of the statutory equitable remedy, to be determined through the exercise of the court's discretion, and not by a jury."

(Cf. *Smith* v. *Hampton Training School for Nurses*, 360 F.2d 577 (4th Cir. 1966); Note also *Cheatwood* v. *South Central Bell Telephone & Telegraph Co.*, 303 F.Supp. 754, 1969; and *Hayes* v. *Seaboard Coast Line Railroad Co.*, 46 F.R.D. 49, 52-53.)

Similarly in the instant case, the demand for injunctive relief and damages is an integral part of the statutory equitable remedy contemplated by Congress, and likewise is only to be determined by the exercise of the court's discretion—not by jury.

A similar analysis of Federal judicial interpretation of the right to jury trial in proceedings under the

Fair Labor Standards Act, 29 U.S.C. §§ 216 and 217, is also persuasive. Congress, when enacting a remedial statute to enforce rights granted thereunder has traditionally explicitly indicated when the action created is to be equitable. Under Section 17 of the Fair Labor Standards Act (29 U.S.C. § 217), the district courts are vested with jurisdiction to restrain violations of the Act, including the withholding of the payment of minimum wages and overtime compensation. The nature of the action under that provision was held by the court to address itself to future violations, and thus, there was no right to trial by jury. *Wirtz* v. *Jones,* 340 F.2d 901, 902 (5th Cir. 1965). Note also *Wirtz* v. *Robert E. Bob Adair, Inc.,* 224 F. Supp. 750, (W. D. Ark., 1963), where the court held that denial of the right to trial by jury of a back pay order sought by the Secretary of Labor, suing to enjoin an employer's withholding of minimum wages and overtime compensation and to enjoin future violations was not violative of the Seventh Amendment guarantee.

Section 16 of that Act (29 U.S.C. § 216) provides an alternative remedy to the individual employee and creates an independent cause of action. If the analysis of the Court of Appeals is carried to its logical conclusion under *Ross* v. *Bernhard, supra,* it is not inconsistent to conclude that the issues of back pay and liquidated damages brought under Section 16 by an individual on behalf of himself and others similarly situated would require a trial by jury on the issues of the amount in question. *Olearchick* v. *American Steel Foundries, Martin* v. *Carnegie-Illinois Steel Corp.,* 73 F. Supp. 273 (W.D. Pa. 1947); *Wirtz* v. *Thompson Packers, Inc.,* 224 F. Supp. 960 (E. D. La. 1963). The action under Section 16(b) is in the form of a suit for

money judgment, without any requirement that it be brought in the form of injunctive relief. Only Section 17 speaks to the remedy of injunction.

To that extent, it is the position of the *Amicus* that the analogy of this case to those brought under Section 17 is a proper one. Both actions are granted to enforce rights granted under the statutes and both are expressly designed to restrain violations. The equitable nature of the remedies created is unmistakably clear. Nothing under *Ross* v. *Bernhard* and the cases cited therein requires a different conclusion.

II. Title VIII of Civil Rights Act of 1968 Is A Remedial Statute To Be Liberally Construed To Effect the Objective Sought

The purpose of the Fair Housing Act is clear—to enunciate a national policy of fair housing throughout the United States and provide a complete remedy to private persons whose civil rights have been violated.

Though the Secretary of Housing and Urban Development is charged with certain administrative duties under the Act to obtain voluntary compliance the primary mode of enforcement of the Act is civil actions by a private citizen seeking redress not only for the violation of his own civil rights but also acting "as private attorney general in vindicating a policy that Congress declared to be of the highest priority." *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211.

The Fair Housing Act, Section 814, requires expedient judicial determination of the claims presented. Congress did not enact that provision without careful consideration of the nature of the fundamental

right granted and the circumstances of the persons the Act was designed to protect. To remove one of the many insidious badges of slavery and to guarantee to minorities an absolute right to obtain interests in real property was clearly the intent of the drafters of this legislation. And by and large, racial minority persons have resorted to the remedies under the Act much more frequently than other groups.[10]

Jury trials, being inherently cumbersome, expensive and complicated, would only erect an obstacle to the enforcement of the Act by private citizens, who can ill afford the luxury of legal gymnastics respecting a need as basic and essential as shelter. The aggrieved private citizen who seeks enforcement under Section 812 is generally in need of immediate housing accommoda-

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[10] For fiscal year ending July 30, 1972, the Department of Housing and Urban Development reported that 2,159 complaints had been filed under Title VIII of the Fair Housing Act, of which approximately 1800 alleged racial discrimination in housing;

The Leadership Council for Metropolitan Open Communities (of greater Chicago) reported that since 1969 it has litigated over 200 suits under the Act on behalf of minorities. Ninety-five (95) percent of those served were Black;

The Justice Department has filed over 149 pattern and practice suits under the Act—all but one filed on behalf of racial minorities;

The files of the N.Y. State Division of Human Rights indicate that of a total of 516 complaints filed alleging discrimination in housing for the year 1972, 379 were filed by racial minorities.

As the statistics unravel it becomes obvious that the primary medium through which minorities assert their rights to equal opportunity in housing is under the Fair Housing Act. The nature and extent to which minorities are still subjected to the indignities of racial prejudice looms clear. For these beneficiaries under the Act, the effect and consequences of a jury trial under Section 812 would be to unduly delay final enforcement of a constitutionally guaranteed right (See *Jones* v. *Mayer Co.*, *supra*).

tions. The drafters of the Act recognized the urgency of that need by providing that a complainant could commence a civil action, upon the respondent's failure to voluntarily comply with the Secretary's efforts to correct the alleged discriminatory housing practice 30 days after such failure. If Section 812 is read to entitle a respondent in a civil action to a jury trial, injunctive relief depending on the back log on a jury calendar will not afford the claimant the adequate remedy contemplated by the Act. With adequate housing accommodations becoming increasingly more difficult to obtain, the claimant cannot afford the luxury of time to have his rights adjudicated and a remedy decreed. If immediate determination is not made, the aggrieved party will generally have no alternative but to seek alternative housing accommodations and to forego injunctive relief.

Congress further indicated it contemplated precisely such a problem by enacting Section 814 requiring expeditious resolution of a claim. To interpret the Act as requiring otherwise will afford the intended beneficiaries, at the most, nominal relief in the form of special or punitive damages which can in no way compensate for the indignity and humiliation suffered as a result of a violation. The attendant effect of such a requirement would be to foster a nullification of the primary thrust and purpose of the statute and to create an unjust and absurd result. General rules of statutory construction require that remedial statutes be liberally construed to accomplish their purpose, here the affording of a private remedy to persons injured by a wrongful act.

Civil rights statutes especially should be construed in such a fashion in order to carry out the purpose

of Congress to eliminate inconvenience, unfairness, and humiliation. *United States* v. *Johnson Lake Inc.*, 312 F. Supp. 1376; Civil Rights Act, 1964, Section 201, 42 U.S.C. 2000(a).

CONCLUSION

It is respectfully submitted that the decision of the Court of Appeals should be reversed and the District Court's order and opinion of May 19, 1970, be reinstated.

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